



U.S. Department of Justice

**Stephen J. Murphy
United States Attorney
Eastern District of Michigan**

*Suite 2001
211 West Fort Street
Detroit, Michigan 48226-3277
Fax: (313) 226-3561*

For Immediate Release:

Contact: Gina Balaya (313) 226-9758
Stephen Moore - IRS (313) 234-2410

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EVENT: Civil Complaint

Defendant: MD Media

FEDS CRACK DOWN ON ILLEGAL "X-RATED" SPAM IN MICHIGAN

United States Attorney Stephen J. Murphy announced today the first ever civil case filed in his district under the Controlling the Assault of Non-Solicited Pornography and Marketing ("CAN-SPAM") Act of 2003. The case, ***United States v. MD Media, Inc.***, is one of seven filed nationally as part of a law enforcement sweep aimed at regulating the distribution of sexually explicit email that does not contain required warning labels under federal law. The suit filed against MD Media, (a Michigan business located on Telegraph Road in Bingham Farms), seeks civil penalties and a permanent bar on the illegal marketing.

As part of a consent decree MD Media has agreed to pay \$238,743 in civil penalties, which figure represents the amount of gross email marketing revenues MD Media received. The settlement bars the illegal marketing practices in the future and require that the defendants monitor their affiliates to ensure they are not violating the law.

United States Attorney Murphy stated, "Unlabeled sexually explicit email can harm children and offend others; its dissemination was regulated by Congress when it passed the

CAN-SPAM Act, which our office is committed to vigorously enforcing. By filing the suit we did today and by working with the Federal Trade Commission (“FTC”) to exact monetary civil penalties, our office continues to demonstrate its strong and historic efforts to keep the children of this district and others safe from these sorts of communications which sent contrary to federal law.”

The FTC’s Adult Labeling Rule and the CAN-SPAM Act both require commercial e-mailers of sexually-explicit material to use the phrase “SEXUALLY EXPLICIT: ” in the subject line of regulated e-mail messages and to ensure that the initially viewable area of the message does not contain graphic sexual images. The Rule and the Act also require that unsolicited commercial e-mail contain an opportunity for consumers to opt out of receiving future e-mail and provide a postal address, among other things. Today’s filing charged that companies sent sexually-explicit e-mail messages that:

- violated the Adult Labeling Rule requirements;
- violated the requirement to provide a clear and conspicuous opt-out mechanism; and
- violated the requirement to provide a postal address.

While the defendants did not send e-mail directly to consumers, they operated “affiliate marketing” programs in which they paid others to send spam on their behalf. Under the CAN-SPAM Act, the defendants are liable for the illegal spam sent by their affiliates because the defendants “initiated” the e-mail by paying others to send it on their behalf.

United States Attorney Murphy saluted Assistant United States Attorney Peter A. Caplan for his hard work on this case and acknowledged the Justice Department’s solid partnership with the FTC in originating this important case.